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Administration of justice at the United Nations

Report of the Fifth Committee

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I. Introduction

1. At its 3rd plenary meeting, on 21 September 2007, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-second session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee for its consideration and to the Sixth Committee in the light of General Assembly resolution 61/261.

2. The Fifth Committee considered the item at its 15th and 26th meetings, on 5 November and 21 December 2007. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records (A/C.5/62/SR.15 and 26).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the report of the Redesign Panel on the United Nations system of administration of justice (A/61/891);

(b) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/61/936);

(c) Report of the Secretary-General on the outcome of the work of the Joint Appeals Board during 2005 and 2006 and statistics on the disposition of cases and work of the Panel of Counsel (A/62/179);

(d) Report of the Secretary-General (A/62/294);

(e) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/62/7/Add.7);

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(f) Report of the Secretary-General on the activities of the Ombudsman (A/62/311);

(g) Letter dated 20 November 2007 from the President of the General Assembly to the Chairman of the Fifth Committee (A/C.5/62/11).

II. Consideration of draft resolution A/C.5/62/L.13

4. At the 26th meeting, on 21 December, the Committee had before it a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/62/L.13), submitted by the Vice-Chairman of the Committee, the representative of the Netherlands, on the basis of informal consultations.

5. At the same meeting, the representative of the Netherlands and coordinator of the informal consultations on the draft resolution orally revised it by inserting after paragraph 52 a new paragraph reading:

> "53. *Takes note* of paragraph 35 of the report of the Advisory Committee on Administrative and Budgetary Questions",

and the subsequent paragraphs were renumbered accordingly.

6. Also at the same meeting, the Committee adopted draft resolution A/C.5/62/L.13, as orally revised, without a vote (see para. 7).

III. Recommendation of the Fifth Committee

7. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005 and 61/261 of 4 April 2007,

Emphasizing the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations,

Reaffirming its decision in paragraph 4 of resolution 61/261 to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike,

Having considered the reports of the Secretary-General on revised estimates relating to the programme budget for the biennium 2006-2007 and the proposed programme budget for the biennium 2008-2009 pursuant to General Assembly resolution 61/261,[1] on the administration of justice,[2] on the outcome of the work of the Joint Appeals Board during 2005 and 2006 and statistics on the disposition of cases and work of the Panel of Counsel[3] and on the activities of the Ombudsman,[4] the related reports of the Advisory Committee on Administrative and Budgetary Questions[5,6] and the letter dated 20 November 2007 from the President of the General Assembly to the Chairman of the Fifth Committee,[7]

1. *Takes note* of the reports of the Secretary-General on revised estimates relating to the programme budget for the biennium 2006-2007 and the proposed programme budget for the biennium 2008-2009 pursuant to General Assembly resolution 61/261,[1] on the administration of justice,[2] on the outcome of the work of the Joint Appeals Board during 2005 and 2006 and statistics on the disposition of cases and work of the Panel of Counsel[3] and on the activities of the Ombudsman[4] and the related reports of the Advisory Committee on Administrative and Budgetary Questions;[5,6]

2. *Recalls* its decision 62/519 of 6 December 2007;

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[1] A/61/891.
[2] A/62/294.
[3] A/62/179.
[4] A/62/311.
[5] A/61/936.
[6] A/62/7/Add.7.
[7] A/C.5/62/11.

3. *Endorses* the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions,[6] subject to the provisions of the present resolution;

I. New system of administration of justice

4. *Stresses* the importance of allocating adequate resources to establish the new system of administration of justice;

5. *Acknowledges* the evolving nature of the new system of administration of justice and the need to carefully monitor its implementation;

6. *Stresses* the importance of ensuring access for all staff members to the system of administration of justice, regardless of their duty station;

A. Scope

7. *Decides* that individuals who have access to the current system of administration of justice will have access to the new system;

8. *Also decides* to revert to the issue of the scope of the system of administration of justice at the second part of its resumed sixty-second session and to request information in this regard from the Secretary-General;

9. *Requests* the Secretary-General to ensure that the daily paid workers in peacekeeping missions are made aware of their rights and obligations and have access to suitable recourse procedures within the framework of the United Nations;

B. Office of Administration of Justice

10. *Decides* to establish the Office of Administration of Justice, comprising the Office of the Executive Director and the Office of Staff Legal Assistance, as well as the Registries for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

11. *Also decides* that the Office of the Executive Director is to consist of one Executive Director (D-2), one Special Assistant (P-4) and one Administrative Assistant (General Service (Other level)), and requests the Secretary-General to ensure that these positions are filled as a matter of priority but no later than 1 July 2008;

C. Office of Staff Legal Assistance

12. *Stresses* that professional legal assistance is critical for the effective and appropriate utilization of the available mechanisms within the system of administration of justice;

13. *Recalls* paragraph 23 of its resolution 61/261, reiterates its support for the strengthening of professional legal assistance for staff in order for staff to continue to receive legal assistance, and decides to establish the Office of Staff Legal Assistance to succeed the Panel of Counsel;

14. *Decides* that the Office of Staff Legal Assistance is to consist of one Chief of Unit (P-5), one Legal Officer (P-3), one Legal Officer (P-2) and three Legal Assistants (General Service (Other level)) in New York, and one Legal Officer (P-3) each in Addis Ababa, Beirut, Geneva and Nairobi;

15. *Also decides* that legal assistance should continue to be accessible to staff at all duty stations;

16. *Requests* the Secretary-General to establish a code of conduct regulating the activity of internal and external individuals providing legal assistance to staff to ensure their independence and impartiality;

17. *Reiterates* paragraph 24 of its resolution 61/261, and requests the Secretary-General to report on the progress made to establish a staff-funded scheme in the Organization that would provide legal advice and support to staff;

18. *Requests* the Secretary-General to develop incentives for staff and management, including through training opportunities, to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance;

19. *Decides* to revert to the issue of the mandate of the Office of Staff Legal Assistance at its sixty-third session;

20. *Requests* the Secretary-General to report on possible measures to encourage responsible use of the system of administration of justice;

21. *Recognizes* that the Office of Staff Legal Assistance and the Ombudsman have two distinct functions;

II. Informal system

22. *Recognizes* that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation;

23. *Also recognizes* that the strengthening of the informal system may reduce recourse to the formal system, thereby avoiding unnecessary litigation;

24. *Stresses* the pivotal role of mediation in reconciling differences;

A. Office of the Ombudsman

25. *Reiterates* its decision to create a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes, decides to establish the Office as from 1 January 2008, and urges the Office of the United Nations Ombudsman, the Office of the Joint Ombudsperson (United Nations Development Programme/United Nations Population Fund/United Nations Children's Fund/United Nations Office for Project Services) and the Office of the Mediator of the Office of United Nations High Commissioner for Refugees to strengthen the ongoing efforts for coordination and harmonization of standards, operating guidelines, reporting categories and databases;

26. *Decides* to establish branch offices for the Office of the Ombudsman in Bangkok, Geneva, Nairobi, Santiago and Vienna, each with one Regional Ombudsman (P-5) and one Administrative Assistant (General Service (Other level/Local level));

27. *Takes note* of paragraph 22 of the report of the Advisory Committee on Administrative and Budgetary Questions;[6]

28. *Requests* the Secretary-General to ensure that staff at all duty stations have access to the Ombudsman;

29. *Endorses* the process of nomination and appointment of the Ombudsman by the Secretary-General, as set out in paragraphs 47 to 49 of his report[2] and recommended by the Redesign Panel in its report;[8]

B. Mediation Division

30. *Endorses* paragraph 21 of the report of the Advisory Committee on Administrative and Budgetary Questions, and decides to establish the Mediation Division as from 1 January 2008;

C. Systemic issues

31. *Notes* section IV, on systemic issues, of the report of the Secretary-General on the activities of the Ombudsman,[4] and emphasizes that the role of the Ombudsman is to report on broad systemic issues that he or she identifies, as well as those that are brought to his or her attention, in order to promote greater harmony in the workplace;

32. *Requests* the Secretary-General to report at its sixty-third session, in the context of human resources management, on specific measures taken to address systemic issues;

III. Formal system

33. *Reaffirms* paragraphs 19 to 24 of its resolution 61/261;

34. *Emphasizes* the importance of ensuring access for all staff to the United Nations Dispute Tribunal, and requests the Secretary-General to make provisions for the travel and related costs of staff whose physical presence before the Tribunals is deemed necessary by the Tribunals and for judges to travel as necessary to hold sessions at duty stations other than New York, Geneva and Nairobi, in particular in Bangkok, Santiago and Vienna;

A. Internal Justice Council

35. *Stresses* that the establishment of an internal justice council can help to ensure independence, professionalism and accountability in the system of administration of justice;

36. *Decides* to establish by 1 March 2008 a five-member Internal Justice Council consisting of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and chaired by a distinguished jurist chosen by consensus by the four other members;

37. *Also decides* that the Internal Justice Council will perform the following tasks:

(a) Liaising with the Office of Human Resources Management on issues related to the search for suitable candidates for the positions of judges, including by conducting interviews as necessary;

(b) Providing its views and recommendations to the General Assembly on two or three candidates for each vacancy in the United Nations Dispute

[8] A/61/205.

Tribunal and the United Nations Appeals Tribunal, with due regard to geographical distribution;

(c) Drafting a code of conduct for the judges, for consideration by the General Assembly;

(d) Providing its views on the implementation of the system of administration of justice to the General Assembly;

38. *Further decides* that the Internal Justice Council will be assisted, as appropriate, by the Office of Administration of Justice;

B. United Nations Dispute Tribunal and United Nations Appeals Tribunal

39. *Decides* to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal as from 1 January 2009;

40. *Also decides* that judges of the United Nations Dispute Tribunal and United Nations Appeals Tribunal shall be appointed by the General Assembly on the recommendation of the Internal Justice Council;

41. *Further decides* to endorse the qualifications of the judges as set out in paragraphs 58 and 67 of the report of the Secretary-General[2] and as further described in its decision 62/519;

42. *Decides* that the United Nations Dispute Tribunal shall, initially, comprise three full-time judges, to be situated in New York, Geneva and Nairobi, and two half-time judges;

43. *Also decides* that further consideration should be given to cases before the United Nations Dispute Tribunal being decided by a panel of judges, depending on the nature of the cases, the workload of judges and the grounds for appeal, and requests the Secretary-General to present further proposals in this regard, including resource implications, to the General Assembly at the second part of its resumed sixty-second session;

44. *Further decides* that the United Nations Appeals Tribunal shall comprise seven members who will sit in panels of at least three;

45. *Decides* that judges shall serve only one non-renewable term of seven years on either the United Nations Dispute Tribunal or the United Nations Appeals Tribunal, with the exception of two of the initial judges of the United Nations Dispute Tribunal and three of the initial judges of the United Nations Appeals Tribunal, to be determined by drawing of lots, who shall serve three years and may consequently apply to the same Tribunal for a non-renewable term of seven years;

C. Registries

46. *Decides* to establish a Registry for the United Nations Dispute Tribunal in New York, Geneva and Nairobi and a Registry for the United Nations Appeals Tribunal in New York;

47. *Also decides* that the Registries will consist of one D-1 Registrar who will oversee the Registries and, for the United Nations Dispute Tribunal in New York, one P-5 Registrar, one P-2 Legal Officer and two General Service (Other level)

Administrative Assistants; for the United Nations Dispute Tribunal in Geneva, one P-5 Registrar, one P-3 Legal Research Officer and two General Service (Other level) Administrative Assistants; for the United Nations Dispute Tribunal in Nairobi, one P-5 Registrar, one P-3 Legal Research Officer and two General Service (Local level) Administrative Assistants; and for the United Nations Appeals Tribunal in New York, one P-5 Registrar, one P-3 Legal Officer and two General Service (Other level) Administrative Assistants; and further decides to approve, as general temporary assistance in New York, the equivalent of one P-4 Information Technology Officer, one General Service (Other level) Information Technology Assistant and Legal Research Officer positions equivalent to P-4 in both Geneva and Nairobi;

48. *Requests* the Secretary-General to provide terms of reference for the Registries, taking into account the current working methods of the United Nations Administrative Tribunal at its sixty-third session;

D. Disciplinary proceedings

49. *Decides* to endorse, in principle, the delegation of authority for disciplinary measures to heads of offices away from Headquarters and heads of missions/Special Representatives of the Secretary-General, and requests the Secretary-General to present a report containing a detailed proposal regarding possible options for delegation of authority for disciplinary measures, including full delegation, as well as an assessment of possible implications for due process rights of staff members;

E. Management evaluation

50. *Emphasizes* the need to have in place a process for management evaluation that is efficient, effective and impartial;

51. *Reaffirms* the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted;

52. *Decides* to establish an independent Management Evaluation Unit in the Office of the Under-Secretary-General for Management, with one Chief of Unit (P-5), two Legal Officers (P-4) and three Administrative Assistants (General Service (Other level)) and general temporary assistance equivalent to one P-4 Legal Officer position;

53. *Takes note* of paragraph 35 of the report of the Advisory Committee on Administrative and Budgetary Questions;[6]

54. *Emphasizes* the importance of prompt decisions and responses to formal requests for management evaluation, and decides that such evaluation should be completed in a timely manner, as soon as possible and within a limit of thirty calendar days for New York Headquarters and forty-five calendar days for offices away from Headquarters after the submission of such a request;

55. *Stresses* the importance of establishing adequate accountability measures for managers to ensure their timely response to management evaluation requests;

56. *Emphasizes* the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations;

IV. Transitional measures

57. *Recalls* paragraph 31 of its resolution 61/261, and urges the Secretary-General to intensify the efforts needed to clear the existing backlog of cases before the Panel on Discrimination and Other Grievances, Joint Appeals Boards, Joint Disciplinary Committees, Disciplinary Boards, the Administrative Law Unit, the Executive Office of the Secretary-General and the United Nations Administrative Tribunal;

58. *Endorses* paragraphs 73, 74, 76 and 80 of the report of the Advisory Committee on Administrative and Budgetary Questions;[6]

59. *Decides* to revert to the issue of transitional arrangements at the second part of its resumed sixty-second session;

60. *Requests* the Secretary-General to consult with the organizations which currently participate in the United Nations Administrative Tribunal with the aim of providing for an orderly transition to another system of their choosing, if they were not to join the new system of administration of justice;

V. Financial implications and cost-sharing arrangements

61. *Underlines* that the funding for administration of justice, based on cost-sharing arrangements, should be clear, predictable and secure;

62. *Decides* to approve the cost-sharing arrangement as outlined by the Secretary-General in paragraphs 161 and 162 of his report;[2]

63. *Urges* the Secretary-General to conclude cost-sharing arrangements with the relevant funds and programmes by July 2008;

64. *Requests* the Secretary-General to review the arrangements for the provision of services of the United Nations Administrative Tribunal to the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the International Seabed Authority, the International Tribunal for the Law of the Sea, the International Court of Justice, the International Maritime Organization, the International Civil Aviation Organization and the United Nations Joint Staff Pension Fund;

VI. Further information

65. *Requests* the Secretary-General to report at the second part of its resumed sixty-second session on the following:

(a) Draft statute for the United Nations Dispute Tribunal;

(b) Draft statute for the United Nations Administrative Tribunal that reflects the decisions contained in the present resolution and its resolution 61/261;

(c) Jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

(d) Grounds of appeal before the United Nations Appeals Tribunal;

(e) Conditions under which the United Nations Dispute Tribunal may refer cases pending before it to mediation, including the requirement of the consent of the parties and the issue of time frames;

(f) A detailed proposal regarding the allocation of cases to the United Nations Dispute Tribunal, taking into account geographical accessibility, the type of cases and the number of cases;

(g) Compensation awarded by the tribunals and alternatives;

(h) The role of staff associations vis-à-vis the formal system of justice;

66. *Also requests* the Secretary-General to provide further information and recommendations, as appropriate, at the second part of its resumed sixty-second session, on the following:

(a) The different categories of non-staff personnel performing personal services for the Organization, including experts on mission, United Nations officials other than staff members of the Secretariat and daily workers;

(b) The types of dispute settlement mechanisms available to the different categories of non-staff personnel and their effectiveness;

(c) The types of grievances the different categories of non-staff personnel have raised in the past and what bodies of law are relevant to such claims;

(d) Any other mechanism that could be envisaged to provide effective and efficient dispute settlement to the different categories of non-staff personnel, taking into account the nature of their contractual relationship with the Organization;

67. *Further requests* the Secretary-General to report at the main part of its sixty-third session on the following:

(a) The revised terms of reference for the Ombudsman, taking into account the changes in functions, presence and proposed locations;

(b) The results of the negotiations between the United Nations and other participating entities on cost-sharing arrangements for the system of administration of justice;

(c) Mechanisms for the formal removal of judges, definition of the "grounds of misconduct or incapacity" and the means for the establishment of such grounds in a specific case;

(d) Viable options for programme support cost/trust funds to share the cost of the new internal justice system;

VII. Other issues

68. *Invites* the Sixth Committee to consider the legal aspects of the reports to be submitted to by the Secretary-General without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters;

69. *Requests* the Secretary-General to ensure that information concerning the details of the new system of administration of justice, in particular options for recourse, are made readily accessible to all staff covered under the new system;

70. *Also requests* the Secretary-General to develop a comprehensive approach to address privacy rights of staff, including the right to confidentiality and the Organization's responsibility for ensuring the due process rights of its staff under investigation;

71. *Further requests* the Secretary-General to report at its sixty-third session on how information and communications technology can improve the functioning of the system of administration of justice.